Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Promoting Efficient Use of Spectrum Through	)	WT Docket No. 00-230
Elimination of Barriers to the Development of	)	
Secondary Markets	)	

REPLY COMMENTS OF THE NATIONAL ASSOCIATION OF MANUFACTURERS AND MRFAC, INC.

The National Association of Manufacturers and MRFAC, Inc. ("NAM/MRFAC") hereby submit their comments on the Further Notice of Proposed Rulemaking in the above-captioned proceeding.[1]

BACKGROUND

The NAM--18 million people who manufacture products in the United States--is the nation's largest and oldest multi-industry trade association. NAM represents 14,000 member companies (including 10,000 small and mid-sized manufacturers) and 350 member associations serving manufacturers and employees in every industrial sector and all 50 States. Headquartered in Washington, D.C., NAM has 10 additional offices across the country.

MRFAC is one of the Commission's certified frequency coordinators for the private land mobile bands from 30 to 900 MHz. It began operation as the frequency coordinating arm for

[1] Report and Order and Further Notice of Proposed Rulemaking, FCC 03-113, released October 6, 2003 (variously cited as the "Further Notice" or the "Report and Order," as appropriate).

NAM. For the past 25 years, MRFAC has operated independently, providing coordination and licensing-related services, particularly for manufacturers and other industrial and business entities. MRFAC has long participated in spectrum rule-makings affecting the interests of manufacturers.

In the above-referenced Report and Order the Commission adopted a number of proposals to allow expanded leasing of spectrum. However, the Commission excluded public safety and shared private land mobile radio spectrum from the scope of the decision. The agency determined that "leasing on shared frequencies presents implementation concerns," noting the fact that prospective lessees can simply apply for their own licenses; and resolved to consider in the Further Notice whether to extend the leasing policies to shared services. Report and Order at para. 85. In the Further Notice the Commission observes that leasing on shared channels could facilitate aggregation of spectrum by multiple licensees for purposes of leasing to third parties, but again questions whether it should allow leasing since prospective lessees "can readily obtain their own authorizations on shared frequencies." Further Notice at para. 305.

The shared frequency bands at issue here are of major importance to US business and industry. Besides meeting the need for traditional dispatch communications, channels from the VHF and UHF bands are used for a host of specialized applications. For manufacturers, these include just-in-time delivery of parts and components to assembly lines, man-down radios required to be worn by those working in isolated spaces, intrinsically-safe radios required for those working in proximity to combustible materials, radios used for overhead crane control, and radios used to remotely control locomotives in and around warehouses and loading docks. These and many other specialized uses are essential for industrial productivity and worker safety.

Because of their highly specialized nature, the communications capabilities provided by shared spectrum facilities like these are not available from third party providers, not at least on terms that meet users' requirements. CMRS vendors are typically interested in mass market offerings, rather than the installation of special facilities to serve the needs of one and only one customer. NAM/MRFAC members have priced such services from third parties, and have found them to be exorbitantly expensive compared to the cost of owning and operating their own systems. Equally important, CMRS providers have been unwilling to provide the iron-clad service reliability/restoration guarantees which are imperative for communications channels integral to industrial production and safety.

It is for these reasons that Commission policies relative to the 150-174 MHz and 450-512 MHz bands (the "shared" bands) are so important to business and industry. This is as true for secondary market leasing, as it is for the effort to re-farm the shared spectrum. In fact , it is because of concerns about the potential effects of leasing on re-farming -- the purpose of which is the relief of spectrum congestion -- that NAM/MRFAC have been moved to comment on the Further Notice proposals in this matter.

DISCUSSION

MRFAC urges that expanded leasing not be extended to shared spectrum until more progress has been achieved toward re-farming the shared private leased mobile radio ("PLMR") bands.

As a general matter, shared spectrum leasing can be expected to complicate the frequency coordination process. Neither coordinators (nor anyone else for that matter) have experience with the usage patterns that might be associated with the expanded leasing contemplated in the Further Notice. While that information could presumably be obtained, getting it would represent an added burden and cost for the coordinator and, ultimately, the coordinator's customers.[2]

More specifically, expanded leasing would complicate the ability of coordinators to accommodate new, more efficient technologies on shared spectrum, that is re-farm the shared spectrum. Trunking is one of those technologies. In order to implement a trunking system, prospective users without exclusivity must secure consents from other co-channel licensees in the area. If one or more of those licensees have leased their spectrum to a third party, securing the requisite consents could be much more difficult. The same goes for coordination of narrowband systems in a wideband environment: An entity which has invested in a lease of capacity from one or more wideband operators represents another vested interest in preserving wideband operations for as long as possible, rather than converting to new, narrowband technology. Here, too, progress toward realizing increased channel capacity via narrowbanding could be frustrated. This is particularly the case given the limited incentives that exist in the first place for adoption of new technologies in shared spectrum. See Second Report and Order and Second Further Notice of Proposed Rule Making in WT Docket No. 99-87, FCC 03-34, released February 25, 2003 at para. 13 (150-174 MHz and 421-512 MHz bands characterized by

[2] Under the terms of the new Rules, basic information such as the identity of the lessee, the spectrum being leased, and the term of the lease would be available via ULS. See Report and Order at para. 124. The weight of the opening Comments is opposed to further data collection/publication by the Commission. See Comments of PCIA, the Wireless Infrastructure Association; Comment of Verizon Wireless at 2; Comments of SBC Communications at 2-4; and Comments of Cingular Wireless LLC at 14-15.

"disincentives for any licensee to become more efficient …"; cited as Second Report and Order).

The complications presented by expanded leasing in shared spectrum are magnified by the unsettled state of re-farming policies. No fewer than eighteen (18) petitions for reconsideration have been filed relative to the mandatory narrowbanding decision. Second Report and Order, supra . Just a few weeks ago the Commission found it advisable to stay the January 13, 2004 effective date for key elements of that decision. Order, FCC 03-306, released December 3, 2003. Given the slow and halting progress toward realizing re-farming's goals,[3] it would be unwise to introduce yet another variable in the re-farming equation, particularly when the benefits from shared spectrum leasing seem so limited.

As the Commission observes in the Further Notice, prospective lessees are readily able to apply for and secure licenses in their own names. Id. at para. 305.[4] They need not undergo the transaction costs of attempting to negotiate a lease in order to gain access to the spectrum. This being so, little would be gained by changing regulatory policies yet again before the more important changes underway in re-farming have achieved their intended purpose.

The Commission has had occasion in the past to consider whether changes in PLMR policies might complicate re-farming, and has determined to give priority to the latter. In particular, the agency determined to allow assignments and transfers of exclusive 800 MHz PLMR spectrum to CMRS entities, as well as CMRS use of such spectrum by Business and Industrial/Land Transportation licensees. In so doing, however, the agency expressly declined to extend the dispensation to re-farming (shared) spectrum. The Commission

[3] It was due to the Commission's conviction that progress toward narrowbanding has been too slow that the agency adopted the mandatory narrowbanding conversion rules. See Second Report and Order, supra, at paras. 10-12.
[4] Shared use pursuant to Rule 90.179 is also available albeit under more restrictive conditions than under the new rules for expanded leasing.

> "emphasize[d] that CMRS use will be limited to the 800 MHz PLMR channels because most of the other PLMR spectrum is shared spectrum. In this context, freer channel transferability in this band is warranted. In addition, the *Refarming* proceeding significantly affected a substantial portion of the PLMR spectrum below 512 MHz. As a result, we are reluctant to introduce additional policy changes with respect to the PLMR spectrum until more time has passed and we have the opportunity to fully analyze the benefits of the licensing reforms that were adopted as part of the *Refarming* proceeding….The approach we adopt today is new, and we believe that we should examine its results with respect to the availability of spectrum for future PLMR needs before we consider extending this approach to other bands."

Report and Order and Further Notice of Proposed Rule Making, FCC 00-403, released November 20, 2000 at note 307 (emphasis added). This view remains valid. NAM/MRFAC urge the Commission to adhere to this position.[5]

[5] In passing we note that the Commission has also inquired whether to allow lessees to use spectrum for purposes at odds with the Rules applicable to the spectrum in question. The question should be resolved in the negative: It is contrary to basic legal principles for a lessee to take more than a lessor has to give. Lessees should be bound by the same eligibility and use rules as their lessors. As the Commission puts it in the Report and Order, "[W]e do not intend for the secondary market initiative to be used as a means to undermine the service rules and general policies applicable to particular licensees." Id. at para. 91; see also id. at paras. 102, 112.

CONCLUSION

For the foregoing reasons, NAM/MRFAC urge the Commission not to extend the new leasing policies to shared PLMR spectrum until more substantial progress has been achieved toward the attainment of the increased channel capacity which is re-farming's goal.

Respectfully submitted,

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